

**Board for Judicial Administration  
Meeting Minutes**

**October 17, 2008  
AOC SeaTac Office  
SeaTac, Washington**

**Members Present:** Chief Justice Gerry Alexander, Chair; Judge Vickie Churchill, Member-Chair; Judge Rebecca Baker; Judge C. C. Bridgewater; Judge Ronald Culpepper; Judge Susan Dubuisson; Judge Deborah Fleck; Mr. Jeff Hall; Mr. Mark Johnson; Judge Michael Lambo; Ms. Paula Littlewood; Judge Richard McDermott; Judge Robert McSeveney; Judge Marilyn Paja (by phone); and Judge Christine Quinn-Brintnall

**Guests Present:** Judge Harold Clarke III, Ms. Marti Maxwell, Ms. Barb Miner, and Judge Ann Schindler

**Staff Present:** Ms. Ashley DeMoss, Ms. Beth Flynn, Mr. Dirk Marler, Ms. Mellani McAleenan, Ms. Regina McDougall, and Mr. Chris Ruhl

Chief Justice Alexander called the meeting to order.

September 19, 2008 Meeting Minutes

Ms. Flynn noted that revisions were suggested by Ms. DeMoss to the Courts of Limited Jurisdiction report contained in the September minutes.

**It was moved by Judge McSeveney and seconded by Judge Lambo to approve the minutes of the September 19, 2008 BJA meeting, with requested revisions to the Courts of Limited Jurisdiction report. The motion carried.**

2009 Salary Commission

Chief Justice Alexander reported that at the September BJA meeting each court level was asked to discuss what kind of a recommendation they think should be made at the upcoming Salary Commission meetings. The first public meeting will be in January. It is important that a decision be made regarding the recommendation so the BJA can make a unified presentation to the Salary Commission.

Mr. Hall explained that every two years the BJA submits the "Washington Judiciary's Presentation to the Citizen's Commission on Salaries for Elected Officials" to the Salary Commission. The Commission reviews the document in November. The basic information included in the 2008 document has not changed from the 2006 version.

Mr. Hall encouraged everyone to read through the information and to contact Ms. Flynn with any comments within the next two weeks so changes can be made prior to forwarding the document to the Salary Commission in November.

Over the last few years, the BJA's goal has been to move toward parity with the federal courts. Judge Paja stated that federal judges were denied a salary increase this year and were also denied a cost of living adjustment (COLA).

Judge McDermott said the SCJA Board of Trustees discussed this issue at a recent meeting along with the current financial situation of the state. The SCJA did not come to any conclusions. Apparently, from what Judge McDermott has been told, the Salary Commission does not consider the state's budget when making salary adjustment recommendations. The SCJA did talk about how many members will be retiring in the next eight years—approximately 40%. Even if the BJA only asks for a COLA, that has a significant impact on the retirement benefit of judges. If the BJA looks at just asking for a COLA, at the very least, arguments could be made that the salary adjustment would attract more judges to replace the retiring judges. Judge McDermott stated that he, personally, would support asking for COLAs. A lot of the superior court judges think it would be politically unwise to ask for a COLA because of the current state of the economy but there was no consensus by the SCJA Board of Trustees.

Judge Bridgewater said the Court of Appeals will poll their judges within the next few weeks to determine how they want to approach the Salary Commission. Judge Bridgewater anticipates they will be very conservative.

Judge Paja reported that the DMCJA decided that since district court judges are paid for with state and county funds that it would not be good politically to ask for a salary increase above a COLA. Also, the DMCJA does not think it is wise to ask for a specific COLA amount.

The Supreme Court did not have a formal vote but Chief Justice Alexander feels comfortable that there is consensus on the Court that the BJA should ask for a COLA. The BJA should also request a bump toward some parity with the federal courts to stem the number of state judges going into private judging. It is important that each court level keep in contact with each other and caucus and make sure everyone is on the same page.

#### BJA Request Legislation

Ms. McAleenan reported that the BJA Proposed 2009 Legislative Agenda is broken up into three categories: 1) new requests, 2) requests that were previously approved, and 3) a request that will be brought to a future meeting. The first two new requests have been approved by the BJA Executive Committee.

The first request is the Washington State Center for Court Research (WSSCR) requesting access to data to complete long-term research regarding juveniles. Also included in their proposed legislation is a requirement that they be trained in sensitive records handling and retention.

**Judge McSeveney moved and Judge Baker seconded to approve the WSSCR request legislation. There was no vote after the discussion.**

Several BJA member stated they would like to review the legislation prior to approval. Ms. McAleenan said the draft legislation will be available at the November BJA meeting.

**Judge Fleck moved and Judge McDermott seconded to table the WSSCR request legislation until the November BJA meeting. The motion carried.**

The second request is for legislation to allow the use of an electronic signature in lieu of a written signature, allowing jurors the ability to complete their juror questionnaire online via a secure site. Completing the questionnaire online would not be a requirement but a convenience for jurors. This issue was discussed during the July joint meeting with the County Clerks.

**It was moved by Judge McDermott and seconded by Judge Paja to approve the electronic signatures for juror questionnaires legislation. The motion carried.**

The third request is for five new King County District Court judges. The total estimated need for King County District Court is 25.57 judges and they currently have 21 judges. From 2000 to 2007, their caseload increased about 30%. Three other factors also influence the request for additional judges.

1. The King County prosecutor, as of the beginning of this month, started sending drug-related cases to district court. It is estimated that will add an additional 2,000 cases per year. Drug-related cases are judge intensive and will require an additional judge which is not reflected in the court's caseload analysis.
2. Next year, the court will receive additional sales tax revenue and will put it toward their drug court so they need approval for a judge now so they are set when the additional revenue is received.
3. King County does have funds available for a commissioner but they need a judge, not a commissioner.

King County District Court definitely has a need for additional judges. The problem, however, comes down to the \$93 million deficit in King County. In that type of atmosphere, it is a little difficult to ask for additional positions. The court has fully briefed the county of their request but they are not sure how the county will react to their

request. It might be more appropriate to address this request in November after the county takes a position on the request.

**It was moved by Judge McDermott and seconded by Judge Fleck to table the King County District Court additional judicial positions request until the November BJA meeting. The motion carried.**

Previously approved BJA request legislation includes the Court of Appeals, Division II, additional judge request. Increased state funding of jury expenses has also been previously approved and will be discussed later during the meeting.

Another approved legislative request is increased state funding of district and qualifying municipal court judges' salaries. Judge Fleck recalls the cost of that legislation being approximately \$5.3 million and she initiated it because she wanted state funding to reach 50% so the book could be closed on one of the major items of the Justice in Jeopardy Initiative. As the economy continues to worsen, Judge Fleck doesn't think this legislation should be pursued. She thinks this should be deferred until the economy improves.

**Judge Fleck moved and Judge Paja seconded to take state funding of district and qualifying municipal court judges' salaries off the slate of BJA request legislation. The motion carried.**

The pending legislative request is for regional courts of limited jurisdiction. Ms. McAleenan anticipates the ad hoc committee will have draft legislation by the November or December BJA meetings. Judge Paja is on the ad hoc committee and Ms. McAleenan and other AOC staff members are working on the actual legislation. There will be some timing issues because the legislation has to go through association levels prior to review by the BJA.

#### Trial Court Operations Funding Committee Revised Juror Pay Legislative Proposal

Judge Clarke gave a presentation at the June BJA meeting regarding the Trial Court Operations Funding Committee's juror pay and interpreter funding proposals. The juror funding proposal that was recommended to the BJA in June was that the state would pay for all juror travel expenses and also pay for the increased daily cost of juror pay (\$65), beginning on the second day of jury service. The estimated cost of the proposal was \$26 million for the biennium.

During the September BJA meeting, Dr. Carl McCurley presented the results of the juror pay pilot project study and the BJA asked the Trial Court Operations Funding Committee to reconsider the juror pay funding proposal based on the study information and the current economic outlook.

The Committee's initial assessment was that the survey was not an overwhelming endorsement of increased juror pay. Upon closer review, there may be additional analysis to do and questions to answer. Continued work needs to be done in this area, but the survey results do take away some of the initial arguments regarding increasing juror pay. As a result, the Committee developed a new legislative proposal. The new proposal still provides for an increased juror reimbursement rate of \$65 per day, adjusted for inflation every year, starting on the second day of service; but the state funding would not begin until July 2010. The proposal also removes the state reimbursement of juror travel expenses and includes language stating the proposal is subject to funding availability. Finally, it provides for a gradual ramp-up to \$65 per day rather than a one-time increase. The economic impact is reflected on the table on page 73 of the materials.

Judge Clarke distributed a bar graph depicting the original plan and proposed plans A and B. The difference between plans A and B is that plan B implements increased state funding of juror pay more slowly than plan A by providing for a longer ramp-up period to \$65 per day.

The Committee is aware that the BJA might drop the entire funding proposal because of the budget forecast—that is plan C. The Committee did talk about plan C but felt it was important, even in light of the financial hardships facing the state, to work toward state funding of juror compensation. The Committee members believe there is a need for some financial assistance for jurors, and they thought it was important that the BJA address this issue. The Committee hopes the BJA will continue to analyze juror pay, further flesh out the pilot project numbers and seek additional follow-up.

Judge Fleck said the Committee discussed at some length whether they should be seeking the increase in juror pay given the current budget outlook. Although there appears to be consensus that increasing juror pay is simply the right thing to do, there is concern that this is the wrong time to be seeking such an increase. In light of the worsening economic forecast, the Court Operations Funding Committee recommended that any increase be phased in in terms of the amount of the increase and that the first increase in pay start in the second year of the biennium. This request would cost \$3 million in the second year of the biennium, rather than the almost \$27 million cost of the previously approved proposal. There will be another revenue forecast prior to the start of the legislative session and if members of the Supreme Court and the BJA determine that any of the budget items in the AOC or Supreme Court budgets need to be revisited, perhaps the juror pay proposal that would be presented to the Legislature needs to be revisited at that time also.

Ms. McAleenan responded that the Legislature typically doesn't like to tie up funding in the future, but this is an issue that legislators are interested in and she does not think the BJA would be wasting their time by requesting future funding. However, waiting for funding will be an issue that needs to be addressed.

Judge Churchill encouraged the BJA members to read the juror pay proposal materials included in the meeting packet and this item will be on the action calendar of the November BJA meeting.

#### Proposed Amendment to IRLJ 6.2 Infraction Penalties

Judge Paja stated that IRLJ 6.2 is coming before the BJA essentially in the form of a DMCJA recommendation for a rule change. The DMCJA wants input from the BJA regarding whether the BJA thinks this is a useful course to take because it requires work to implement. It is a big part of business for the DMCJA and part of the penalties come back to cities and counties.

The problem is with the separation of powers. The Supreme Court receives a request to amend the penalties and sends the request to the DMCJA for review and then the DMCJA makes a recommendation and sends it back to the Supreme Court to adopt.

The penalty amounts are large and base penalties are set without any input from the public. Citizens who come to court inquire of the judge to find out who sets the penalties. There has, in fact, been a delegation by the Legislature to set penalties to the Supreme Court because there was no logical agency to set penalties resulting in the separation of powers becoming quite blurred. The courts now set the penalties, enforce them, and collect money on behalf of our local jurisdictions and the state.

The issue has been discussed by the DMCJA over a period of time and it has the approval of the DMCJA Board. The DMCJA does not want to make a formal request without running it past the BJA.

Mr. Hall provided some background information regarding the PSEA and Infraction Penalties Subcommittee's work. The Subcommittee was established to work on the recommendations of the Court Funding Task Force including: 1) repeal RCW 46.63.110 (3) which prescribes that the Supreme Court establishes the traffic infraction penalty schedule and eliminate all legislative assessments on traffic penalties; and 2) to develop a penalty classification schedule similar to civil infractions under Title 7 RCW. The Subcommittee worked on the recommendations and concluded it would be feasible to reclassify all the penalties into 12-15 classes. Two things led to a recommendation to not undertake the project at this time. 1) Where AOC was with the Judicial Information System (JIS) system Case Management System (CMS) process. 2) The perception by judges on the Subcommittee that if the Legislature set the penalties, there would be rampant traffic penalty increases.

The DMCJA will continue to work on this issue and bring it back to the BJA at a future meeting.

### GR 33 Requirements

Judge Culpepper shared that GR 33 is a relatively new rule and Pierce County Superior Court is concerned about the budget impact of the rule. It is an unfunded mandate. Pierce County has received about ten requests related to GR 33 so far and most of them are for family law cases. Pierce County is concerned that this is likely to become more and more of a funding issue as people become more aware of the rule.

Mr. Hall stated that the Court Management Council (CMC) had a discussion about this recently and this is on their radar screen. Ms. Carol Maher, AOC's ADA Coordinator, is also looking at the rule more broadly. Part of the CMC discussion was whether or not the adoption of GR 33 was the cause of the cost. It is an operation of state law that actually costs money.

Ms. Littlewood said the WSBA Impediments Committee has also been working on this issue.

Mr. Marler said he and Chris Ruhl recently discussed some of the issues that have surfaced regarding GR 33 implementation with Judge Anne Ellington. In general, Judge Ellington's observation was that the rule did not so much create new rights as bring attention to those that already existed. The CMC will have discussions over the next few months with the WSBA Impediments Committee. If there are changes to the rule that may seem appropriate, the CMC will come back to the BJA with recommendations.

### Trial Court Coordination Report

The Trial Court Coordination Report was distributed in the meeting materials. Ms. McAleenan noted Skagit County's Regional Staff Training and that courts in several counties are involved and over 100 employees will attend the training.

Judge Baker asked if there is a component of evaluating the success of each project. She said it would be interesting to find out if King County's Jury Summons Response project was successful. Mr. Hall said the reporting requirements are that the counties report to the BJA and the Administrative Office of the Courts regarding their use of the funds but not on the success of the projects.

### Washington State Bar Association

Mr. Johnson shared that he is grateful for the opportunity to be a member of the BJA. During the September WSBA Board of Governors (BOG) meeting they 1) voted to oppose the proposed Legal Technician Rule. 2) Unanimously endorsed a resolution supporting same-sex marriage. They knew issue would be controversial but some saw it as a civil rights issue and some saw it as a practice of law issue. 3) Voted to recommend that the WSBA increase license fees in 2010 and 2011.

Ms. Littlewood shared that the WSBA BOG adopted their fiscal year 2009 budget in September. One of their budget goals is to make the Continuing Legal Education department self-sustaining.

Reports of Courts:

**Courts of Limited Jurisdiction:** Judge Paja received an invitation from the Deans of the law schools at Seattle University, the University of Washington, and Gonzaga University regarding meetings on the issue of "Justice During a Budget Crisis." Judge McDermott was also invited and Ms. Joanne Moore is involved in the project. The first meeting will be held at Seattle University in the next few weeks. The second one will be held in November at the University of Washington.

During the Annual Judicial Conference Judge Tom Ellington was honored with the Washington Judges' Foundation Nevins Fund Award.

**Superior Courts:** Judge McDermott reported that the SCJA Board of Trustees met in Spokane during the Annual Judicial Conference and addressed a number of issues including GR 34.

The Office of Civil Legal Aid (OCLA), the WSBA and Judge Mary Yu worked and came close to reaching an agreement on a re-drafted version of GR 34.

**Court of Appeals:** Judge Bridgewater stated that Division II entered into a 10-year lease for the building they currently lease. The building is still under state ownership and the state is looking for the market to improve before they sell it.

Division II will ask for an additional judge but will not ask for it to be funded. Division II is currently in negotiations with Division I for assistance with their caseload.

**Supreme Court:** Chief Justice Alexander reported that the Supreme Court is in the middle of the fall term.

The Supreme Court recently held a ceremony in which they accepted the presentation of historic photos related to the life of Judge James M. Phillips, the first Native American to serve as a judge in the Washington court system.

The Law Library is exhibiting items related to the Doctors' Trial (U.S. Nuremberg Military Tribunal No. 1). If you are in the Olympia area stop in and look at the items Supreme Court Justice Walter Beals brought back from Nuremberg.



Administrative Office of the Courts

Mr. Hall thanked the AOC staff for pulling off another Annual Judicial Conference. The next conference is the Presiding Judges' Conference at the Great Wolf Lodge.

The AOC Information Services Division (ISD) is in the process of a reorganization.

Mr. Hall will be announcing the AOC Human Resources Associate Director in the next few weeks.

Other Business

**BJA Financial Report:** A notice will be mailed to Washington judges indicating BJA dues will not be collected this year. Mr. Hall thought it would be appropriate to send a dues notice on a regular, annual basis indicating if dues will be collected or not. The notice will be mailed by mid-November.

There being no further business, the meeting was adjourned.